

ANNUAL JUDICIAL CONFERENCE
MONDAY, APRIL 23, 2007
HYATT REGENCY DEARBORN

OPENING REMARKS OF CHIEF JUSTICE CLIFFORD TAYLOR

THANK YOU, CARL. ON BEHALF OF MYSELF AND MY FELLOW JUSTICES, WELCOME TO THIS ANNUAL CONFERENCE. IT'S A PLEASURE TO SEE SUCH A GOOD TURNOUT. TO OUR NEW JUDGES, A SPECIAL WELCOME TO THE BENCH.

AMONG THOSE REGISTERED FOR THIS CONFERENCE ARE OUR COLLEAGUES FROM THE TRIBAL COURTS, RETIRED JUDGES, MEMBERS OF THE STATE LEGISLATURE, AND REPRESENTATIVES OF THE STATE BAR. IF YOU'RE WONDERING WHY THERE IS A TV CAMERA IN THE ROOM, THAT'S BECAUSE OUR GOOD FRIENDS AT MICHIGAN GOVERNMENT TELEVISION ARE COVERING THIS OPENING SESSION. THE SUPREME COURT HAS A LONG AND HAPPY WORKING RELATIONSHIP WITH MGTV, GOING BACK TO 1996, WHEN MGTV BEGAN TELEVISIONING OUR ORAL ARGUMENTS. SOME MIGHT SAY THAT'S AS MUCH A SLEEP AID AS A PUBLIC SERVICE, BUT WE DO THINK THAT MGTV DOES A GREAT JOB OF HELPING US EDUCATE THE PUBLIC ABOUT THIS COURT'S WORK.

I JOIN CARL IN THANKING YOU ALL FOR THIS FINE TURNOUT, AND IN THANKING DAWN MCCARTY AND HER STAFF FOR THEIR EXCELLENT WORK IN PUTTING TOGETHER THIS CONFERENCE. I KNOW YOU WILL FIND THIS CONFERENCE TO BE WELL WORTH THE SACRIFICE OF TIME AND CONVENIENCE THAT YOU ALL MADE TO BE HERE.

WE ARE ONCE AGAIN FORTUNATE TO HAVE VERY FINE FACULTY FOR THE CONFERENCE, INCLUDING SOME OF YOUR TRIAL BENCH COLLEAGUES, NATIONALLY-REKNOWNED SCHOLARS, SCAO AND SUPREME COURT STAFF, AND DISTINGUISHED MEMBERS OF THE BAR. AS IN YEARS PAST, GEORGE MASON UNIVERSITY LAW AND ECONOMICS CENTER IS PROVIDING SOME OF THE SESSIONS AND ABSORBING MUCH OF THE COST, INCLUDING THE SPEAKERS' TRAVEL AND HONORARIUM COSTS. WE ARE ESPECIALLY GRATEFUL FOR GEORGE MASON'S INVOLVEMENT, PARTICULARLY WITH OUR CURRENT BUDGET SITUATION, WHICH CARL ADVERTED TO A MOMENT AGO.

AS WOODY ALLEN SAID, "MONEY IS BETTER THAN POVERTY, IF ONLY FOR FINANCIAL REASONS." BEGINNING WITH MY PREDECESSOR MAURA CORRIGAN'S TENURE AS CHIEF, WE HAVE FOUND OURSELVES CUTTING SIGNIFICANTLY EVERY YEAR. THROUGH CREATIVITY AND PRUDENCE, WE HAVE MANAGED TO AVOID THE WORST. THIS COMING FISCAL YEAR, HOWEVER, WILL TRULY BE ONE OF MAJOR SURGERY. I REGRET TO REPORT THAT WE ARE FACING A 2.94 MILLION DOLLAR REDUCTION TO THE JUDICIAL BRANCH BUDGET WE HAD PROPOSED TO THE

LEGISLATURE. IT'S DISAPPOINTING, BUT NOT AT ALL SURPRISING. THESE ARE VERY TOUGH TIMES FOR MICHIGAN; EVERY GOVERNMENT AGENCY AND FAR TOO MANY MICHIGAN CITIZENS ARE FEELING THE PAIN. YOU KNOW YOU'RE IN TROUBLE WHEN YOUR STATE'S ECONOMIC WOES MAKE THE EDITORIAL PAGES OF THE WALL STREET JOURNAL AND WHEN YOUR STATE'S FISCAL SITUATION IS COMPARED UNFAVORABLY TO THAT OF THE STATES HIT BY HURRICANE KATRINA. WHAT DOES THIS LATEST REDUCTION MEAN? ALMOST CERTAINLY, SERIOUS STAFF REDUCTIONS, POSSIBLY BY LAYOFFS, AND FURLOUGH DAYS. I BELIEVE, IF WE HOPE TO MAINTAIN STAFF MORALE AND HAVE THEM UNDERSTAND HOW DEEPLY WE APPRECIATE THEM, IT IS NECESSARY THAT WE SHARE IN THE SACRIFICE. AS A RESULT, AT AN EMERGENCY MEETING LATE LAST WEEK, I INFORMED MY FELLOW JUSTICES THAT I WOULD BE GIVING UP MY STATE CAR AND ENCOURAGED THEM TO JOIN ME. THERE IS NO DUTY TO DO SO AND WE ARE NOT ORDERING THEM TO BECAUSE IT IS PART OF THEIR COMPENSATION THAT CANNOT BE CUT MID-TERM. YET, UNDERSTANDING OUR SITUATION AND MICHIGAN'S NEED, ALL OF THEM HAVE DONE SO. FURTHER, ALL STAFF CARS WILL BE TURNED IN AND MY HOPE IS THAT THE COURT OF APPEALS JUDGES WILL JOIN US. CHIEF JUDGE WHITBECK WILL BE ABLE TO LET YOU KNOW OF THE DECISION OF HIS JUDGES. FURTHER, FOR YEARS THE STATE COURT ADMINISTRATIVE OFFICE HAS REVIEWED STATE TRIAL COURTS' WORKLOADS TO DETERMINE THE NEED FOR JUDGESHIPS. WE HAVE RECOMMENDED THE ELIMINATION OF JUDGESHIPS AS WELL AS SOME ADDITIONS. THE LEGISLATURE, HOWEVER, HAS NOT ELIMINATED BUT INSTEAD HAS ADDED JUDGESHIPS. THIS WE CANNOT AFFORD. WE HAVE REACHED A POINT WHERE OUR STATE MAY, TO PUT IT BLUNTLY, HAVE MORE JUDGES THAN IT TRULY NEEDS. ACCORDINGLY, WE WILL AGAIN BE RECOMMENDING TO THE LEGISLATURE THAT JUDGESHIPS IN OVER-JUDGED AREAS BE ELIMINATED BY ATTRITION OR PERHAPS, IF THE LEGISLATURE AGREES, WITH INCENTIVES FOR EARLY RETIREMENT. EVEN IN GOOD TIMES, WE SHOULD NOT HAVE MORE JUDGES THAN WE NEED, AND THAT IS EVEN TRUER NOW.

WE MUST ALSO CONSIDER WHETHER THE COURT OF APPEALS CONTINUES TO NEED 28 JUDGES. IN THE 1990S, WHEN FILINGS AVERAGED ABOUT 12,000 PER YEAR, THE COURT OF APPEALS WAS IN DIRE NEED OF ADDITIONAL JUDGES TO MEET THAT WORKLOAD, HENCE THE LEGISLATURE AGREED TO INCREASE THE BENCH TO 28. OUR MOST RECENT ANNUAL REPORT REVEALS THAT ABOUT 7,900 CASES WERE FILED WITH THE COURT OF APPEALS IN 2006, CONTINUING A TREND OF THE LAST FIVE YEARS DURING WHICH FILINGS HAVE HOVERED IN THE 7,000'S. AGAIN, WE DO NOT HAVE A SPECIFIC RECOMMENDATION YET TO GIVE THE LEGISLATURE, BUT WE ARE INDEED GOING TO LOOK AT THE NUMBERS FOR THAT BENCH AS WELL. AS WITH THE TRIAL COURTS, REDUCTIONS WILL BE BY ATTRITION OR PERHAPS INCENTIVIZED RETIREMENTS.

I REALIZE THAT NONE OF THIS IS POPULAR, EASY OR PLEASANT. BUT AS THE SAYING GOES, DESPERATE TIMES CALL FOR DESPERATE MEASURES. I AM CERTAINLY OPEN TO SUGGESTIONS FROM YOU AS TO HOW WE DEAL WITH THIS CRISIS, BUT THE TIME HAS CLEARLY COME FOR US TO SHARE THE PAIN.

IN PREPARING TO INTRODUCE OUR FEATURED SPEAKER, I WAS REMINDED OF JUDGE LEARNED HAND'S FAMOUS SAYING THAT "THE LANGUAGE OF THE LAW MUST NOT BE FOREIGN TO THE EARS OF THOSE WHO ARE TO OBEY IT." THE PLAIN LANGUAGE MOVEMENT HAS BEEN STEADILY GATHERING STEAM IN THE LAW, BUT THE EMPHASIS HAS BEEN ON THE WRITTEN RATHER THAN THE SPOKEN WORD. OUR FEATURED SPEAKER IS HERE TO HELP WITH THE ORAL SIDE OF RENDERING CLEAR DECISIONS. TIMOTHY TERRELL IS A PROFESSOR OF LAW AT EMORY UNIVERSITY SCHOOL OF LAW, WHERE HE JOINED THE FACULTY IN 1976. HIS VERY IMPRESSIVE RESUME INCLUDES AN UNDERGRADUATE DEGREE FROM THE UNIVERSITY OF MARYLAND, A YALE LAW DEGREE, AND A POST-GRADUATE DIPLOMA IN LAW FROM OXFORD UNIVERSITY IN ENGLAND. HE TEACHES PRINCIPALLY LEGAL ETHICS, LEGAL THEORY, AND PROPERTY LAW. BUT HIS INFLUENCE IS HARDLY LIMITED TO THE ACADEMY. LAW FIRMS, CORPORATE LAW DEPARTMENTS, GOVERNMENT AGENCIES, AND OTHERS HAVE ALL BENEFITTED BY HIS EXPERTISE IN LEGAL WRITING, AS HAVE NUMEROUS JUDGES AND JUDICIAL CLERKS, INCLUDING NEW APPELLATE JUDGES IN NEW YORK. HE IS ALSO THE CO-AUTHOR OF A POPULAR TEXT ON LEGAL WRITING, ENTITLED *THINKING LIKE A WRITER: A LAWYER'S GUIDE TO EFFECTIVE WRITING AND EDITING*. WE ARE VERY FORTUNATE TO HAVE HIM AT THIS CONFERENCE, AS I THINK YOU WILL AGREE. PLEASE JOIN ME IN WELCOMING PROF. TERRELL.